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**CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
STRUCTURE OF GOVERNMENT**

POLITICAL PARTIES SUBMISSIONS

**STRUCTURE AND FUNCTIONING OF
GOVERNMENT AT PROVINCIAL LEVEL**

(COMPOSITE EDITION)

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PARLEMENT
PARLIAMENT

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Demokratiese Party
Democratic Party
18 May 1995

To: Mr Hassen Ebrahim
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**DEMOCRATIC PARTY: SUBMISSION TO THEME COMMITTEE 2
BLOCKS 2 & 3 ON
"THE STRUCTURE AND FUNCTIONING OF THE
GOVERNMENT AT PROVINCIAL LEVEL, INCLUDING CHECKS
AND BALANCES TO ENSURE ACCOUNTABILITY,
RESPONSIVENESS AND OPENNESS"
(Ref T.C. 2 no 3)**

INTRODUCTION

1. The Constitution must make provision for the following:
 - (a) A general constitutional framework for those Provinces who do not wish to draw up their own provincial constitutions, and
 - (b) the procedures by and the framework within which Provinces who wish to can draw up their own constitutions.
2. The relevant provisions contained in Chapter 9 - PROVINCIAL GOVERNMENT - of the present (1993) Constitution, excluding the transition provisions, provide a basis for 1(a) and 1(b) above.

**PROVINCIAL LEGISLATIVE AUTHORITY
Reference 1993 Constitution Sections 125 to 143**

The Democratic Party proposes the following substantive amendments to the above:

Section 126 See submissions submitted to Theme Committee 3.

Section 127 (a) The number of members should be the same as the number of constituency members' elected to the National Assembly from each Province plus another twenty five percent more in number.

- (b) The constituency numbers shall be elected on the basis of multi-member constituencies and the balance proportionately on a party list system, the two sets of members combined to result in the proportional representation of the various parties in the provincial legislature.
- (c) Where the above results in a legislature having fewer than 25 members, the number of "constituency" and "list" numbers shall be increased so that the legislature will have a minimum of 25 members.

Section 128 The term of office of legislature should be four years.

Section 133 A candidate for election to the legislature must be a registered voter in the Province concerned.

Section 133 Subsection 133(b) stating that a member shall vacate his or her seat should he or she cease to be a member of the party which nominated him or her as a member of the legislature should be deleted.

PROVINCIAL EXECUTIVE AUTHORITY
Reference 1993 Constitution Sections 144 - 154

Section 149 (a) The Executive Council should consist of between 5 to 10 members providing the number of members of the Executive Council do not exceed one fifth, (20 percent) of the number of members of the Provincial Legislature.

(b) Sub sections requiring a "government of national unity" type of Executive Council should be deleted.

New Section Provision should be made for the Provinces to be empowered to establish "Inter Government Consultative Councils" to assist in achieving the necessary co-operation and agreement between the Provinces on matters of mutual interest.

PROVINCIAL CONSTITUTIONS
Reference 1993 Constitution Sections 160 - 162

Section 160 Subsection (3) requires that "A provincial constitution shall not be inconsistent with this Constitution, including the Constitutional Principles set out in Schedule 4: Provided..... (DP underlining)

Once the new constitutional text has been adopted the Constitutional Principles set out in Schedule 4 could fall away unless specifically included as stated principles in the new constitutional text.

Should the Constitutional Principles fall away there would be no stated Constitutional Principles with which a future new provincial constitution would have to be consistent.

The apparent void requires that the Constitutional Assembly considers including in the new constitutional text those of the Constitutional Principles which have a direct bearing on the drafting and adopting of future provincial constitutions.

Constitution Principles that should be considered for inclusion in terms of the above mentioned comments are, *inter alia*, the following:

VI

"There shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness."

VIII

"There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll, and, in general, proportional representation."

IX

"Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government."

X

"Formal legislative procedures shall be adhered to by legislative organs at all levels of government."

XI

"The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged."

XII

"Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognised and protected."

XIV

"Provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy."

XVI

"Government shall be structured at national, provincial and local levels."

XVII

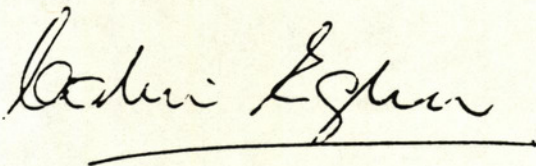
"At each level of government there shall be democratic representation. This principle shall not derogate from the provisions of Principle XIII."

**FORMAT OF NEW CONSTITUTIONAL TEXT IN RESPECT OF
PROVINCIAL STRUCTURES AND THE ADOPTION OF
PROVINCIAL CONSTITUTIONS**

It would be appropriate to deal with the above issue in the following way:

The first matter to be dealt with should be "the adoption of Provincial Constitution." This would include:

- (a) an amended Section 160 giving Provinces the authority to adopt new provincial constitutions.
- (b) the parameters within which new constitutional constitutions may be drawn up and adopted.
- (c) the Constitutional Principles with which new Constitutions must comply.



Colin Eglin
Democratic Party



INKATHA

Inkatha Freedom Party

IQembu leNkatha Yenkululeko

THEME COMMITTEE No. 2 STRUCTURES OF GOVERNMENT

BLOCK No. 2 STRUCTURES OF GOVERNMENT

A Necessary Premise

Any further submission on the structures of government requires the prior determination of a general framework related to the "form of government" along the lines of the submission which the IFP made for Block No. 1 of this Theme Committee. It may be fruitless to continue to make submission if there is no clarity on the most fundamental aspects of the form of government, such as whether the offices of head of state and head of government should be separate, whether there should be a parliamentary rather than an executive form of government, and whether there should be bi-cameralism with the Senate which represents Provinces rather than the people.

The general framework must also include items related to the form of state along the lines of the submission which the IFP made in Theme Committees Nos. 2 and 3. In fact, there is quite a difference if the structure of government relate to a strong central government operating within the parameters of a unitary state with limited provincial devolution, or if alternatively such structures and functions relate to a federal system in which Provinces are the primary government of the people and central government's functions are few and limited. In a federal system there is a lesser need for checks and balances to be placed within the structures of the form of government, because of the countervailing effect of provincial executives and legislatures.

Since September 1994 the IFP had indicated that there is logical and constitutional necessity that the process proceeds from a preliminary determination of the form of state¹, to be finalized by means of international mediation. In the absence of any clarity, this process is turning into a meaningless facade aimed at justifying a final constitution which will not be the result of discussion on, and full analysis of the merits of parties' inputs.

¹ More accurately, it can be noted that the IFP has been putting this demand forward since December 10, 1992 when Prince M. Buthezi met with then State President F.W. de Klerk for the first time after the signature of the Record of Understanding.

The IFP is serious in its desire to participate in the constitution-making process, and therefore this submission is drafted starting from the premises of the unresolved framework issues which should have been dealt in Block No. 1, which are hereinafter re-proposed here in a smaller typeface.

A Necessary Framework (Our Block No. 1 submission)

SUPREMACY OF THE CONSTITUTION:

1. The Constitution in its entirety shall be the supreme law of the land. Therefore, the Constitution shall be fully and entirely justiciable by means of a Constitutional Court, and shall be the parameter for the validity and legality of the legislation of Parliament.
2. The constitution shall bind not only all organs of the Republic but shall also apply to all legal relations.
3. In relation to their respective areas of constitutionally recognized autonomy, the Constitution shall be implemented not by the national government but rather by the Provinces, and by social and cultural formations, or by individuals, respectively. For instance, the constitutional right to health entrenched in the national constitution shall be implemented exclusively by the provincial legislation and administrative action.

SEPARATION OF POWERS (Form of State):

1. There shall separation of powers between national and provincial levels of government.
2. Provinces shall be the primary government of the people and shall be entitled to exercise any type of power and function which can adequately and properly be exercised at provincial level.
3. Only the powers of the national government ought to be listed in the constitution, while all other powers should be left to the Provinces.
4. Provinces shall have full judicial powers in all matters of their competence.
5. National government shall have no overrides and, as a rule, Provinces shall have exclusive powers. Both the national and the provincial levels of government shall enjoy exclusive powers. Relations between the two levels of government shall be regulated by checks and balances, intended as a predetermined set of mutual interferences among the powers of each level of government, also based on the extension by relevancy or implication of the exclusive powers of the national level of government into the areas of competence of the Provinces, as in theory is the case in the U.S. system (i.e.: interstate commerce). In specific areas of provincial competence, the techniques of national framework legislation regulating exclusive provincial powers could also be used in matter which requires concurrence between the national and provincial levels of government, provided that national legislation shall not be so detail to actually regulate, or exercise the actual function in the matter concerned.
6. There shall be separation of powers between all levels of government and civil society.
7. Individuals as well as social, cultural, political and economic formations shall be recognized and guaranteed a sphere of protected constitutional autonomy defined by the interests which they are capable of self-regulating and administering and in respect of which no government has a compelling reason of public interest to intervene.

WHAT TYPE OF DEMOCRACY:

1. The principle of participatory and/or direct democracy should be constitutionally entrenched in addition to the principle of representative democracy [see *infra*].
2. The principle of the autonomy of individuals as well as of economic, social, political and cultural formations should also be entrenched with respect to all activities for which any level of government does not have a compelling justification of public or national interest to regulate, control or directly exercise. *Inter alia*, the foregoing principle recognizes the autonomy of churches, political parties, professional associations, chambers of commerce, universities, arts and culture organization, family structures, traditional communities, economic enterprises, civics, private contractual autonomy in economic and personal matters, et cetera.
3. The principles of (a) transparency, (b) political accountability and (c) civil accountability of governmental

structures shall be constitutionally entrenched.

SEPARATION OF POWERS (Form of Government):

1. There shall be a pure parliamentary form of government.
2. Head of State and Head of Government shall be separate. Parliament shall sit for a five year term.
3. The President shall be elected by parliament in joint session for a seven year non renewable term and shall have the task to ensure the proper functioning of the constitutional and institutional machine.
4. The President shall appoint the head of government who shall form the cabinet in his/her discretion.
5. Cabinet shall be in a fiduciary relationship with Parliament which shall freely exercise its no-confidence vote without being dissolved.

HEAD OF STATE AND HEAD OF GOVERNMENT

1. In order to secure greater democracy and improve checks and balances, the office of the Head of State and that of the Head of Government should be separate.
2. The Head of State should ensure the preservation of the constitutional order and the proper functioning of the constitutional machinery while the Head of Government shall be in charge of the daily operation of Government.
3. Important functions related to the composition of other constitutional organs, such as the Constitutional Court and the defense forces² could be ascribed to the Head of State rather than to the Head of Government.
4. The Head of State shall own exercise functions with respect to the representation of the state in international relations, ceremonial functions, the political resolution of conflicts within the institutional machine, and clemency and granting of honours.

EXECUTIVE AND PARLIAMENTARY FORM OF GOVERNMENT

1. South Africa should have a pure parliamentary system in which cabinet is collegially responsible to parliament, with which cabinet is to entertain a fiduciary relation.
2. Parliament's vote of no-confidence should not be impaired.
3. After consultation with the leaders of the political parties the Head of Government (Prime Minister) shall be appointed by the Head of State (President).
4. The Head of Government shall form the Cabinet and submit it for ratification by means of a vote of confidence of both Houses of in joint session.

MONO-CAMERALISM OR BI-CAMERALISM

1. There shall be a bicameral system and the Senate shall represent the Provinces.
2. The Senate shall have as much legislative power as the National Assembly.

RECONCILIATION OF DIFFERENT TEXTS ADOPTED BY THE TWO HOUSES

1. Differences between the texts adopted by the two Houses should be reconciled by a Joint Standing Committee of the two Houses in which the Senate and the National Assembly have an equal number of representatives.
2. The text so reconciled shall be approved by both Houses separately.
3. If one of the Houses does not approve it, the legislation is not enacted.

THE SENATE

1. The Senate should not have less legislative authority than the one given to the National Assembly.
2. The Senate should represent the provinces and its members should derive directly from the provinces either through appointment or through indirect elections.
3. Each province shall be equally represented in the Senate.

² The IFP has proposed that the Defense Force be under the control of a collegial civilian body headed by the Head of State, who is also the Commander-in-Chief of the Defense Forces.

4. Legislation affecting the powers, functions and boundaries of Provinces may only be introduced in the Senate. Legislation affecting one or more specific Provinces must be approved by the senators of the Province(s) concerned.

COMPOSITION AND APPOINTMENT/ELECTION OF THE SENATE

1. Senators should be elected for a five year term by the Provincial Legislatures in consultation with the provincial Cabinet.
2. The Premiers of the Provinces shall have the privilege of the floor for themselves and/or for their ministers or designees.

ROLE OF SENATE WITH RESPECT TO SOME EXECUTIVE FUNCTIONS

1. The Senate should have a special role in monitoring the function of the Executive branch of government with respect to some activities which are outside the competence of the Provinces such as defense and armed forces³.

COMPOSITION OF CABINET

1. Members of Cabinet shall be appointed by the Head of Government and shall serve at his or her pleasure, subject to the power of Parliament to vote its no confidence with respect to Cabinet in its entirety.

POWER SHARING OR ROLE OF MINORITIES IN CABINET

1. The IFP does not believe in constitutionally mandated power-sharing arrangements.
2. The IFP believes that the protection of minorities should be provided for by means of a federal system and by means of very effective protection of minorities in Parliament⁴.

RELATION BETWEEN HEAD OF GOVERNMENT AND MINISTERS - COLLECTIVE OR PERSONAL RESPONSIBILITY OF CABINET

1. The Ministers shall be chosen by the Head of Government and shall serve at his/her pleasure, provided that any substitution shall be ratified by a resolution of at least one House of Parliament.
2. Cabinet shall be collegially responsible to Parliament.
3. Each Minister shall be responsible to Cabinet for his/her Department, provided that Parliament may ask any Minister to provide information or to tender his/her resignation to Parliament.

CONSTITUTIONAL COURT

1. A portion of the justices of the Constitutional Court shall be appointed by the Provinces from their own judicial systems and legal fraternities.

TRADITIONAL LEADERS AND THEIR STRUCTURES

The separation of powers of government should be cross-referenced with the recognition of the role of traditional leaders and the preservation of traditional communities.

In fact, traditional communities are autonomous societies, organised by traditional and customary law and administered by traditional leaders. Within a traditional community, legislative and executive and judicial functions are exercised in terms of indigenous and customary law, which also determines the degree and the modalities of the separation of

³ For instance, the Senate could be charged with the special task to authorize the execution by the Executive of international treaties or the employment of armed forces outside the country or even within the country for civil protection reasons.

⁴ In further submissions to this and other Theme Committees the IFP will address the issue of protection of political minorities in Parliament.

these powers. Among the most significant aspects which regard the exercise of these powers is the institution of communal property.

OUR BLOCK NO. 2 SUBMISSION

SELECTION OF THE HEAD OF STATE (President)

1. The Head of State (President) shall be elected by a Resolution of Parliament in joint session, if both Houses have the same or similar number of members, or by a separate resolution of each House.
2. Each resolution must be adopted by the two third majority of the members of Parliament (or of each House concerned).
3. If after three failed Resolutions on different candidates the required majority cannot be achieved, the President may be elected by absolute majority (50%).

POWERS OF THE HEAD OF STATE

1. The President shall have only the following powers:
 - appointment of the Head of Government, subject to ratification of the entire Cabinet by Parliament
 - dissolution of one or both Houses of Parliament, in which case the President must call new elections to be held within two months from dissolution or provide for the reappointment of Senators, none of which powers may not be exercised in the last six months of the President's term of office.
 - accreditation of ambassadors and foreign delegations
 - approval and promulgations of the laws
 - civilian and military awards and honours as provided by the law
 - first convocation of the Parliament after elections and when appropriate
 - organization and operation of the President's office
 - clemency, indemnity and amnesty when so empowered by the law
 - other matters ascribed to the President by the constitution.
2. All actions of the Presidents must be countersigned by the competent Minister who shall bear joint responsibility for the actions of the President
3. Should the President be incapacitated, the functions ascribed by this constitution to the President are exercised by the President of the Senate while the Minister of Home Affairs shall also act as chief Minister of the Government. Should the President become permanently incapacitated the President of the National Assembly shall call an election.
4. The President may be removed from office before the end of his or her term by a resolution adopted by the absolute majority of Parliament in a joint session summoned by the President of the National Assembly. The President may be removed from office only on the grounds of mental incapacity, treason or felony. The Constitutional Court shall direct the investigation.

VETO POWERS:

1. The Head of State, to be separate from the Head of Government, shall have the power to veto

legislation on a line-by-line basis.

ACCOUNTABLE ADMINISTRATION:

1. The notion of administrative justice and judicial reviewability of all administrative actions shall be constitutionally entrenched.
2. Public official shall be personally responsible for gross negligence and malice.
3. Provision shall be made for the recognition of the right to petition any government structure.
4. The constitution should entrench the notion of participation of the affected public interest in the formative process of an administrative action.
5. The right to access to all government information shall be recognized, with customary exclusions and qualifications.

COMMISSIONS AND "REGULATORY AGENCIES"

1. The Constitution should provide for the possibility that independent regulatory bodies, in the form of "commission" or "agencies" may be established by an Act of Parliament.
2. The Constitution shall entrench the principle that all rule-making must take place with the participation of the affected interests.
3. A court of law shall have the power to review the legitimacy, even if not the merits, of any adjudicatory process administered by regulatory bodies.

PROVINCIAL LEGISLATIVE AND EXECUTIVE STRUCTURES

1. In terms of CP XVIII (2) read together with section 160 (3) of the interim constitution, the next Constitution may not reduce the power of Provinces to determine their own legislative and executive structures and procedures by means of a constitution for the Province.
2. The Constitution should not provide for legislative and/or executive structures for the Provinces. The next Constitution will come into force with already operational Provinces, and therefore the Constitution needs merely to indicate that the existing provincial and legislative structures shall continue into force until otherwise modified by provincial constitutions.
3. No further detail on the provincial executive and legislative structures and procedures shall be contained in the Constitution.



National Party
Nasionale Party

Federal Council
Federale Raad

12 May 1995

Mr Hassen Ebrahim
Constitutional Assembly
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Adderley Street
CAPE TOWN

Dear Mr Ebrahim

Enclosed please find the National Party submissions to Theme Committee 2 in respect of the Work Programme, on Provincial Legislative and Executive Structures.

This document replaces the previous document concerning this specific subject.

Yours faithfully

pp Mr J.A. Rabie LP

THEME COMMITTEE 2

NATIONAL PARTY SUBMISSION

PROVINCIAL LEGISLATIVE AND EXECUTIVE STRUCTURES

A INTRODUCTION

1 The transitional constitution as point of departure

In principle, the National Party believes that the provincial legislative and executive structures provided in the transitional constitution form a convenient point of departure for the deliberations in this Theme Committee. Those structures could, of course, be amended as may be deemed necessary. The National Party for one has a number of minor suggestions in this regard.

2 Establishment of the provinces

We accept the existence of the nine provinces as established in terms of section 124 of the transitional constitution and, apart from possible consequential amendments for example to the names of the provinces, do not propose any fundamental changes to that provision. However, perhaps the extensive provisions in section 124 dealing with the amendment of provincial boundaries could now be simplified.

B THE LEGISLATURE

1 Composition

1.1 *Electoral system*

In principle, the electoral system of proportional representation should be retained for the election of members of provincial legislatures (section 127). Elsewhere we propose an adaptation to that system for the purposes of the election of the National Assembly in terms of which (i) elections should be held on the basis of voters' lists, and (ii) elected members should be designated after the election by their respective parties to formally represent particular magisterial districts, and we now propose that it should apply to the provincial legislatures as well.

1.2 *Members*

(a) If the idea is accepted that the membership of our legislatures must be decreased, the present section 127 which provides for a minimum and maximum number of members for provincial legislatures should also be reconsidered.

(b) The qualifications and disqualifications for membership of provincial legislatures and related matters should remain the same as for Parliament (sections 132 and 133, as well as sections 134 and 136).

1.3 *Term*

The present provisions with regard to the term and the dissolution of a provincial legislature, including the effect of motions of no-confidence,

should be retained unamended (sections 128 and 154). The executive remains accountable to the legislature and dependent upon its support and the present provisions follow logically from that principle.

2 Functioning

The provisions regarding the following matters concerning the functioning of the provincial legislatures should be retained without substantial amendment:

- (a) sittings (section 130);
- (b) the election of a Speaker and Deputy Speaker (section 131);
- (c) the powers, privileges and immunities of legislatures (section 135);
- (d) the adoption of rules and orders (section 137);
- (e) the quorum and requisite majorities for decision-making (sections 138 and 139);
- (f) legislative procedures (sections 140 and 141);
- (g) public access (section 142); and
- (h) the administration of provincial legislatures (section 143), from which, of course, the transitional provision (subsection (1)) may now be deleted.

C THE EXECUTIVE

1 Composition

1.1 *The Premier*

(a) There seems to be no compelling reason why the provisions dealing with the election and term of office of the Premier and Acting Premier should be amended. The present sections 145, 146 and 148 could, therefore, remain unchanged.

(b) The powers of the Premier should be retained (section 147), but it could be considered that, analogous to the position at national level (see section 82(2)), the Premier should be compelled to consult with the leaders of the other parties in the Executive Council before exercising certain of his or her powers.

1.2 *The Executive Council*

(a) Elsewhere the National Party has argued strongly in favour of the retention of the principle of a government of national unity in terms of which the national executive should be composed on a multi-party basis. We propose that the same principle be adhered to at provincial level and that the provincial executive councils also remain composed proportionally by those parties that qualify. Section 149 should, therefore, be retained unamended.

(b) A reduction in the number of members of the executive councils could be considered, especially in the case of the smaller provinces, provided that it does not detrimentally affect the proportional composition of a council (section 149(1)).

(c) Decision-making on the basis of consensus (section 150) must be retained as a corollary to the point made in paragraph (a).

(d) The other provisions pertaining to the executive councils, namely assignment and transfer of powers (sections 151 and 152), accountability (section 153), and votes of no-confidence (section 154), can all be retained unamended.



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1 March 1995

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**PAC PRELIMINARY SUBMISSION
THEME COMMITTEE 2 BLOCK 2/3**

STRUCTURE OF GOVERNMENT

NATIONAL LEVEL

The Legislature

The PAC stands for a unicameral legislature. In South Africa the case for a second chamber has not been made. If it has been made, it certainly has not been proved. Our present Senate obviously does not as yet represent provinces. It is a mirror image of the National Assembly.

It cannot be said that Senators are doing a better job of reviewing legislation than the Select Committees of the National Assembly. Rather than reducing the number of the members of the National Assembly, the PAC would suggest instead that we strengthen the Select Committees of the National Assembly, and abolish the Senate, because it is a very expensive duplication!

The Executive

The PAC stands for a strong presidency and a president who is a member of the National Assembly and the leader of the majority party. Ministers must be appointed by the President. They must be members of Parliament and should be responsible to Parliament. We are, of course, opposed to constitutionally enforced coalitions or enforced power-sharing. Coalitions must be a

voluntary consequence of the political process.

At Provincial Level

- (i) The PAC support provincialism with purely administrative centres, and with very soft borders. This will bring government and services closer to the people.
- (ii) While we accept that provinces can play a role in economic management and development, the PAC believes that they should not have any taxation powers.
- (iii) Equally they should have delegated powers from central government and no exclusive powers. The present nine provinces should be reviewed with a view to reducing their number. We have too many structures which are sapping the resources that should build houses, roads and schools.

In drawing the boundaries, we also need to take into account the question of land claims. We do not want to have tribal border wars in this country again.

A G Ebrahim

MP



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TK2-06A

*Mr Hassen Ebrahim,
The Executive Director,
Constitutional Assembly,
Regis House,
Adderley Street,
Cape Town.*

20 March 1995

Dear mr. Ebrahim,

**FREEDOM FRONT PROPOSAL:
BLOCKS 2 AND 3 - THEME COMMITTEE 2**

*Please find enclosed the Freedom Front proposals for Theme Committee 2
on the Structures of Government, Blocks 2 and 3.*

Yours truly,

[Senator P.H. Groenewald] Maj-genl

DRAFT: FOR DISCUSSION PURPOSES ONLY

**FREEDOM FRONT
SUBMISSION TO THEME COMMITTEE-2:
BLOCK 2 AND 3: STRUCTURES OF GOVERNMENT**

INTRODUCTION

1. This proposal by the Freedom Front may be influenced by the proposals which the Volkstaat Council will make. It is however, not expected that the Volkstaat Council's proposal will have any significant influence on the structures of government proposed here.

CONSTITUTIONAL PRINCIPLES

2. The Constitutional Principles to be adhered to are the following:

2.1 Principle X:

Formal legislative procedures shall be adhered to by legislative organs at all levels of government.

2.2 Principle XII:

Collective rights of self-determination in forming, joining and maintaining organs of civil society, including the linguistic, cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognised and protected.

2.3 Principle XVI:

Government shall be structured at national, provincial and local levels.

2.4 Principle XVIII[2]:

The powers and functions of the provinces defined in the Constitution, including the competence of a provincial legislature to adopt a constitution, shall not be substantially less than or substantially inferior to those provided for in this Constitution. [Read with Section 160[3][a] of the constitution].

2.5 Principle XXXII.

The Constitution shall provide that until 30 April 1999 the national executive shall be composed and shall function substantially in the manner provided for in Chapter 6 of this constitution.

THE LEGISLATURE

CONSTITUTION OF PARLIAMENT

3. Parliament should consist of two chambers, the National Assembly and the Senate.

THE NATIONAL ASSEMBLY

4. The Composition of the National Assembly.

4.1 The number of representatives in the National Assembly should be determined by:

a. The functions of the central government. If more power is devolved to the provinces, the number of representatives in the National Assembly should be decreased in favour of more substantial representation in the provinces.

b. The role played by Select Committees. At present Select Committees play a vital role and their role should not be changed. Smaller political parties find it difficult, but very important, to participate in all the activities of the Select Committees and should the representation become smaller, the role of the Select Committees would decrease in importance. Effective central government therefore also requires a minimum strength.

c. With the present functions of the central government, the number of representatives in the National Assembly should not be less than 350 and not more than the present 400.

4.2 The following sections of the present constitution should be maintained:

a. Section 40,[1] to [5]: Composition of the National Assembly.
[see 4.1 above].

b. Section 41: Speaker and Deputy Speaker of the National Assembly.

- c. Section 42: Qualification for membership of the National Assembly.
- d. Section 43: Vacation of Seats.
- e. Section 44: Filling of Vacancies.
- f. Section 45: Oaths or Affirmation by members of the National Assembly.
- g. Section 46: Sittings of the National Assembly.
- h. Section 41: Quorum.

THE SENATE

5. Introduction.

- 5.1 At present, the Senate in South Africa is very much a replica of the National Assembly. Provincial interests are not significantly represented by the Senate and the Senate does not have the power to properly review legislation passed by the National Assembly.
- 5.2 South Africa should have a second chamber because of the following reasons:
 - a. The ethnic, racial, regional and linguistic differences in South Africa. In most countries where these conditions exist, a second chamber was structured to be a watchdog over the interests of cultural and corporate groups.
 - b. The conflicting interests that cannot be reconciled at national assembly level and the necessity to recognize provincial centres of power. A second chamber is normally designed to protect regional centres of power.
- 5.3 The Senate should therefore reflect the truly diverse nature of the country and society, and represent the different peoples of South Africa. Such a chamber is required to act as nation building institution, to reconcile the differences mentioned above and to reduce the potential for political conflict.

5.4 The role of the Senate within the overall political process must be defined in such a way that it becomes a cost effective goal orientated institution which will command respect and earn dignity in fulfilling a crucial role in government. It should not frustrate democracy but play an indispensable role in facilitating not only effective and stable government but also the building of culture and common purpose in South Africa. Constitutionally, the South African Senate should give the world an instrument for reconciliation which is truly South African.

6. Composition and Mandate of the Senate. The number of representatives in the Senate should be determined by the functions allocated to the Senate. The FF proposes that the composition should be as follows:

6.1 8 Senators from each province, nominated by the parties represented in the provincial legislature within 10 days of an election held in pursuance of the dissolution of parliament. The Senate should, as its first and primary function, look after provincial and cultural interests. In order to do this, the constitution should give the Senate an original mandate and power to:

- a. Interact with the Provinces, and/or representatives of corporate groups.
- b. Review, revise and even veto legislation related to the Provinces.

Section 61 of the present constitution should be amended accordingly.

6.2 8 Senators nominated by the "National Council of Traditional Authorities". These Senators should form the Executive of the National Council of Traditional Authorities. Note. This proposal should be finalised in Block 4 [Traditional Authorities]. The specific functions of the Senate in respect of Traditional Authorities should also be determined in Block 4.

6.3 8 Senators elected by voters registered on the community voters role as Afrikaner community voters. The number of Senators should be determined by a formula based on percentage voters represented by the Afrikaners seeking self-determination. Note. The "community voters role" referred to will be part of the FF proposal for self-determination.

- 6.4 Should other ethnic groups seek cultural self-determination, they could also be given representation in the Senate.
- 6.5 As in the case of provincial interests, the Senate should have a special mandate to protect the cultural interests of all the language and cultural communities in South Africa.

Note. The formulation of the proposed constitutional changes to the second chamber should be referred to the constitutional experts.

7. Functioning of the Senate. The following sections of the 1993 Constitution should be retained in the new Constitution in as much as they do not contradict the alterations proposed in paragraph 6:

- 7.1 Section 49: President and Deputy President of the Senate.
- 7.2 Section 50: Qualification for membership of the Senate.
- 7.3 Section 51: Vacation of seats by Senators and filling of vacancies.
- 7.4 Section 52: Oaths of affirmation by Senators.
- 7.5 Section 53: Sittings of the Senate.
- 7.6 Section 54: Quorum.

THE NATIONAL EXECUTIVE

THE HEAD OF STATE AND THE HEAD OF GOVERNMENT

8. The FF proposes that the following Sections in the 1993 Constitution, should be maintained:

- 8.1 Section 75: "The executive authority of the Republic with regard to matters falling within the legislative competence of Parliament shall vest with the President, who shall exercise and perform his or her powers and functions subject to and in accordance with this Constitution".
- 8.2 Section 76: "The President shall be the Head of State".

9. The FF is of the opinion however, that the functions of Head of State and Head of Government cannot be executed efficiently by one person only. The

workload of the President must therefore be lightened by the appointment of one or two Deputy Presidents or a Prime Minister.

10. Election of the President.

10.1 The National Assembly and the Senate shall at a joint sitting, which must be their first sitting after Parliament has been convened, elect one of the members of Parliament as President.

10.2 Sections 77[2],[3],[4] and [5] should be maintained.

11. The following Sections in the 1993 Constitution should also be maintained:

11.1. Section 78: Oath of Affirmation.

11.2 Section 79: Remuneration of the President.

11.3 Section 80: Tenure of Office of the President.

11.4 Section 83: Confirmation of executive acts of the President.

11.5 Section 86: Acting President.

11.6 Section 87: Removal from office of President and Deputy President/Prime Minister.

THE CABINET

12. Composition of the Cabinet. The Cabinet shall consist of the President, Deputy Presidents/Prime Minister and not more than 24 Ministers appointed by the President.

13. Appointment of Cabinet Members. The President shall appoint members of the Cabinet, or fill any vacancy if required, from the National Assembly or the Senate.

14. Terminating a Cabinet Appointment. The President shall terminate any appointment to the Cabinet if, in his opinion, it becomes necessary to comply with the spirit and the letter of the Constitution or it is deemed to be in the interest of good government.

15. Cabinet Procedure. Meetings of the Cabinet shall be presided over by the President or by a Deputy President.

16. Temporary assignment of Minister's powers and functions to another Minister. Section 90 should be maintained.
17. Transfer of Minister's power and functions to another Minister. Section 91 should be maintained.
18. Accountability of Ministers and Cabinet. Section 92, [1] to [4] should be maintained.
19. Votes of no confidence. Maintain Section 93.
20. Appointment of Deputy Ministers. Section 94 should be maintained.

THE PROVINCIAL LEGISLATURE

THE LEGISLATURE

21. There shall be a legislature for each province. The following sections in the 1993 Constitution should be maintained:

- 21.1 Section 125: Provincial Legislature.
- 21.2 Section 127: Composition of Provincial Legislature. The number of MPC's should be determined by the functions and powers allocated to provinces.
- 21.3 Section 128: Duration and dissolution of provincial legislatures.
- 21.4 Section 130: Sittings of Provincial legislature.
- 21.5 Section 131: Speaker and Deputy Speaker of provincial legislature.
- 21.6 Section 132: Qualification for membership of provincial legislature.
- 21.7 Section 133: Vacation of seats and filling of vacancies. Sub-section 133[2] to be scrapped.
- 21.8 Section 138: Oath or affirmation by members.
- 21.9 Section 135: Powers, privileges and immunities of provincial legislatures and benefits of members.

- 21.10 Section 136: Penalty for sitting or voting when disqualified.
- 21.11 Section 137: Rules and orders.
- 21.12 Section 138: Quorum.
- 21.13 Section 139: Requisite majorities.
- 21.14 Section 140: Assent to Bills.
- 21.15 Section 141: Signature and enrolment of provincial laws.
- 21.16 Section 142: Public access to provincial laws.
- 21.17 Section 143: Administration of provincial legislatures.

PROVINCIAL EXECUTIVE AUTHORITY

22. The executive authority of a province shall vest in the Premier of the province who shall exercise and perform his or her powers and functions subject to and in accordance with the constitution of South Africa.

23. The following sections of the 1993 Constitution should be maintained:

- 23.1 Section 145: Election of Premiers.
- 23.2 Section 146: Tenure of and removal from office of Premiers.
- 23.3 Section 148: Acting Premiers.

EXECUTIVE COUNCILS

24. The Executive Council of a province shall consist of the Premier and not more than 10 members appointed by the premier.

25. The Premier shall determine portfolios, appoint members to Executive Councils, terminate appointments for the purposes of the constitution and in the interest of good government, and fill vacancies when necessary.

26. The following sections of the 1993 Constitution should be maintained:

- 26.1 Section 150: Executive Council procedure.

- 26.2 Section 151: Temporary assignment of powers and functions to executive council members.
- 26.3 Section 152: Transfer of powers and functions from one member to another member.
- 26.4 Section 153: Accountability of members of the executive council.
- 26.5 Section 154: Votes of no confidence.

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FREEDOM FRONT
20 MARCH 1995

